

**38 CFR Part 61****RIN 2900-AR35****VA Homeless Providers Grant and Per Diem Program**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is proposing to amend its regulations that govern its Homeless Providers Grant and Per Diem Program. This proposed rule would implement the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 by amending the allowable rate of per diem VA provides to grant recipients and eligible entities for homeless veterans and establishing a new rate for homeless veterans who care for a minor dependent by adding an additional per diem amount for each minor dependent. This proposed rule would also make technical corrections and update outdated terminology and cross-references.

**DATES:** Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Comments may be submitted through [www.Regulations.gov](https://www.Regulations.gov).

Comments should indicate that they are submitted in response to ["RIN 2900-AR35 – VA Homeless Providers Grant and Per Diem Program."] Comments received will be available at [regulations.gov](https://www.regulations.gov) for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** Chelsea Watson, Director, Grant/Per Diem Program, (673/GPD), VA National Grant and Per Diem Program Office, 810 Vermont Ave. NW, Washington, DC 20420. [GPDgrants@va.gov](mailto:GPDgrants@va.gov) (813) 979-3570. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On January 5, 2021, section 4204 of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, Public Law 116-315 (the Act), amended VA's authority for the VA Homeless Providers Grant and Per Diem (GPD) Program in 38 United States Code (U.S.C.) 2012. The GPD Program provides grants to recipients and eligible entities to provide transitional housing with supportive services for veterans experiencing homelessness as they transition to permanent housing. The purpose of the GPD Program is to promote the development and provision of supportive housing or supportive services with the goal of helping homeless veterans achieve residential stability, increase their skill levels and income, and obtain greater self-determination. Section 2012 establishes the parameters for the rate of per diem payments VA will provide to a grant recipient or eligible entity for services furnished to homeless veterans. VA implements section 2012 in regulation in 38 Code of Federal Regulations (CFR) part 61.

The Act amended the parameters in which VA can adjust the per diem amount and established an additional amount of per diem for veterans with minor dependents. Therefore, we propose to amend 38 CFR part 61 to reflect these statutory changes. We also propose to make technical edits to part 61 and eliminate outdated terminology and cross-references.

### **Substantive Amendments**

As noted above, VA is proposing several substantive changes to part 61 to implement the Act.

#### **Section 61.1 Definitions.**

Section 61.1 of 38 CFR provides the definitions for the GPD Program. In this rulemaking, we propose to add a definition to the list of definitions in § 61.1. The Act amended section 2012 to revise subsection (a)(2)(A)(iii) to establish an additional amount available to a recipient of a grant or eligible entity for services to homeless

veterans when the eligible veteran has care of a minor dependent. We would, therefore, propose to add a definition of minor dependent to clearly state who VA considers a minor dependent for purposes of this additional per diem amount.

VA conducted a review of many States and Federal agencies to determine how it should define the term minor dependent; however, we found that the States and Federal agencies have varying definitions of minor dependent. We also found that some Federal agencies, such as VA, do not define the term minor dependent, but instead define the term child. Section 101(4) of title 38, U.S.C., defines the term child for VA's purposes generally as a person who is unmarried and is (1) under the age of eighteen years; (2) who, before attaining the age of eighteen years, became permanently incapable of self-support; or (3) who, after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-three years), is pursuing a course of instruction at an approved educational institution. The definition also includes a detailed description of the required familial relationship to the veteran.

For the purposes of the definition of minor dependent for the GPD program, we propose to adopt VA's definition of child in section 101(4) with minor changes. We would define minor dependent as someone who is unmarried, is identified by the veteran as a family member when presenting for GPD services, and is either under the age of 23 years old or is 23 years old or older and became permanently incapable of self-support before reaching the age of 23. We would exclude emancipated children, as they have taken the affirmative step to establish their independence, meaning they are no longer dependents. Instead of utilizing the detailed and nuanced description of the relationship between the minor dependent and the veteran that is in section 101(4), for the purposes of the GPD program, we would permit the veteran to identify the minor dependent as a family member. This is consistent with how we administer other grant programs, such as the Supportive Services for Veteran Families Grant Program. It is

also important because it would allow for flexibility for this population of veterans who may not have traditional family structures. In addition, instead of distinguishing between the age of 18 and up to 23 years old based upon completion of educational training, we would permit all individuals to be minor dependents up to 23 years old. Doing so would make it easier for veterans and their minor dependents so that no verification of educational training would be required.

### **Section 61.33 Payment of per diem.**

The Act amended section 2012 by adjusting the parameters under which VA can pay grant recipients and eligible entities. Section 2012(a)(2), as amended, continues to provide that the rate for such per diem payments shall be the daily cost of care estimated by the grant recipient or eligible entity, as adjusted by VA, excluding other sources of income. The Act revised section 2012(a)(2)(A) by adding an additional amount for services provided to a homeless veteran caring for a minor dependent (as discussed above). The Act also revised section 2012(a)(2)(B) to provide that any adjustment may not result in a rate that is lower than the rate in effect under this paragraph as in effect immediately preceding the date of enactment of the Navy SEAL Bill Mulder Act of 2020 (Title IV of the Act, which had a date of enactment of January 5, 2021) and may not result in a rate that exceeds the rate that is 115 percent of the rate authorized for State homes for domiciliary care under 38 U.S.C. 1741(a)(1)(A). The Act also added a new item in section 2012(a)(2)(B)(i)(II)(bb) that provided that the rate may be determined based on locality.

In this rulemaking, we propose to amend 38 CFR 61.33, regarding payment of per diem, to be consistent with the Act. Current § 61.33(c) provides the rate of per diem payment for each veteran in supportive housing shall be the lesser of: (1) the daily cost of care estimated by the per diem recipient minus other sources of payments to the per diem recipient for furnishing services to homeless veterans that the per diem recipient

certifies to be correct (other sources include payments and grants from other departments and agencies of the United States, from departments of local and State governments, from private entities or organizations, and from program participants); or (2) the current VA State home program per diem rate for domiciliary care, as set by the Secretary under 38 U.S.C. 1741(a)(1). We, therefore, propose to amend paragraph (c) to align with the statutory changes made by the Act.

We would amend paragraph (c)(2) to state the maximum allowable rate is the rate as adjusted by the Secretary under 38 U.S.C. 2012(a)(2)(B)(i)(II)(aa) and made available on the program's website.. Referencing the statutory citation will direct the public to the criteria, and if there is a change to the statutory language in the future, VA would not necessarily need to amend its regulations to be in alignment with the new changes. Rather, VA would maintain seamless compliance with evolving statutory authorities by implementing the necessary changes regarding the rate through Notices of Funding Opportunities (NOFO), grant agreements, and the program website. We note that the maximum rates are currently posted on the GPD Program's website which will not reflect rates that are lower than \$49.91 ([https://www.va.gov/HOMELESS/GPD\\_ProviderRate.asp](https://www.va.gov/HOMELESS/GPD_ProviderRate.asp)), and we propose to continue to provide the rates on such a public-facing VA website.

The Act also established a new subsection (e) in section 2012 that allows reimbursement of certain fees charged to a recipient of a grant under section 2011, 2013, or 2061, or a recipient of per diem payments under section 2012 of title 38 for the use of the homeless management information system (HMIS) described in section 402(f) of the McKinney Vento Homeless Assistance Act (42 U.S.C. 11360a(f)) in amounts the Secretary determines reasonable, and if the Secretary determines that the grant or per diem payment recipient is unable to obtain information contained in such system through other means and at no cost to the recipient. However, the GPD program

historically considered these fees to be allowable costs that could be calculated as part of the indirect or direct cost of the grant, as applicable; per diem recipients can continue to include the costs of accessing HMIS into the cost of care calculations as usual, and if HMIS costs result in a rate that exceeds the cap, those costs can be accommodated. Therefore, we would continue to include these costs in the per diem payments, and we do not believe it necessary to amend the regulations accordingly. Nevertheless, VA understands the importance of HMIS participation and would continue to emphasize its importance to the fullest extent through other means, such as through NOFOs, grant agreements, the case management program, and other communication tools.

We note that VA published a final rule on June 25, 2021, 86 FR 33518, that inadvertently removed an exception to the rate of payment for individual veterans, in what was previously in the introductory sentence in 38 CFR 61.33(b) and in paragraph (b)(3). The omitted language should have been included in the introductory sentence of current paragraph (c) and as paragraph (c)(3). We propose to correct this omission. We would amend the introductory sentence of paragraph (c) to now add an exception under paragraph (c)(3). We are also proposing to add a new paragraph (c)(3) to restate the exception that was omitted in the prior final rule with no edits to the language aside from correcting the citation from paragraph (b)(1) to reference paragraph (c)(1). Paragraph (c)(3) would state for a veteran who is placed in housing that will become permanent housing for that veteran upon termination of supportive housing services, the rate of payment shall be the lesser of 150 percent of the current VA State home program per diem rate for domiciliary care, as set by the Secretary under 38 U.S.C. 1741(a)(1) or the daily cost of care estimated pursuant to paragraph (c)(1) of this section.

As previously noted, the Act added a new item in section 2012(a)(2)(B)(i)(II)(bb) that provided that the rate may be determined based on locality. VA is not exercising this authority at this time.

In this rulemaking we also propose to add a new paragraph (d) to address the rate of payment for a veteran who has care of one or more minor dependents. The Act established that, for purposes of calculating the rate for per diem payments, in the case of a homeless veteran who has care of a minor dependent while receiving services from the grant recipient or eligible entity, the daily cost of care of the homeless veteran shall be the sum of the daily cost of care of the homeless veteran plus, for each such minor dependent, an amount that equals 50 percent of such daily cost of care. See 38 U.S.C. 2012(a)(2)(A)(iii). For clarity and consistency with our current regulatory structure, VA believes it would be more appropriate to create a separate paragraph for the additional rate for veterans who have minor dependents when implementing this provision.

The rate would be calculated by determining the rate of the individual veteran pursuant to paragraph (c) and then adding 50 percent of that rate for each minor dependent. Instead of specifically stating that we would add 50 percent of the rate for each minor dependent, we would cite to the statutory authority at 38 U.S.C. 2012(a)(2)(A)(iii). Referencing the statutory authority could allow for VA to quickly make any changes to the rate structure were Congress to make any future amendments to how the rate should be calculated. In addition, we would state that the additional rate would be made available on the GPD Program's website. Proposed paragraph (d) would also require that the veteran be receiving services from the grant recipient or eligible entity, consistent with the Act, and would require the minor dependent to occupy a bed on the same day for which a veteran-care rate is paid. This would be consistent with the language in section 2012(a)(2)(A)(iii).

## **Technical Edits**

In addition to the substantive changes discussed above, VA also proposes a number of technical or grammatical amendments to part 61.

## **Notice of Funding Opportunity.**

We propose to make technical edits throughout part 61 to replace the term Notice of Fund Availability or NOFA with Notice of Funding Opportunity. We would be making these edits to mirror the term as it is used in other sections of the CFR, specifically 2 CFR 200.204, which governs Notices of Funding Opportunity for discretionary grants and cooperative agreements. These edits would not change the meaning of the definition as stated in § 61.1. For this reason, we propose to amend §§ 61.1, 61.3, 61.11, 61.12, 61.14, 61.15, 61.18, 61.31, 61.32, 61.41, 61.51, 61.52, 61.54, and 61.92.

## **Capitalization of the term State.**

Part 61 of 38 CFR does not consistently capitalize the term State as it applies to one of the 50 States, Commonwealths, or territories of the United States. As such, we propose to capitalize the term State by amending §§ 61.1, the definitions of public entity and State, 61.11(b)(6), 61.13(d)(10), (f), and (g), 61.15(a)(6) and (a)(7), 61.31(b)(4), 61.51(b)(6), 61.53(c)(6), 61.61(e), 61.62(c), 61.80(a) and (b)(4), 61.92(d)(7), (f), and (g).

## **Section 61.1 Definitions.**

We propose to remove the term area or community from the list of definitions in § 61.1. VA defines the term area or community as a political subdivision or contiguous political subdivisions (such as a precinct, ward, borough, city, county, State, Congressional district, etc.) with a separately identifiable population of homeless veterans. We propose to remove the definition of area or community because VA no longer relies on the area or community as the term is currently defined. Instead, VA relies on the VA medical facility areas, which are stated in the NOFOs.

We propose to remove the term fixed site from the list of definitions in § 61.1. VA defines the term fixed site to mean a physical structure that under normal conditions is not capable of readily being moved from one location to another location. VA believes



that this term can rely on the common dictionary definition of the term and does not see that any additional clarification is provided by this regulatory definition.

We propose to make a technical correction to the definition of homeless in § 61.1 by correcting the statutory citation at the end of the definition. In the current definition, we define homeless to have the meaning given that term in section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a)). To correct the citation, we propose to add subsections (b) and (d) after the citation to section 11302(a) to now state 42 U.S.C. 11302(a), (b), and (d). This correction is made to include relevant clarifications from the law about the definition of homeless. No other edits to the meaning of this paragraph would be intended by this change.

As previously stated in this rulemaking, we propose to amend the term Notice of Fund Availability to now state Notice of Funding Opportunity. In addition, we also propose to clarify that Notices of Funding Opportunities are published on the Office of Management and Budget (OMB)-designated website (as required by 2 CFR 200.204 and OMB's Management Procedures Memorandum No. 2021-01). We propose to make this edit because grant opportunities generally are no longer published in the Federal Register, but rather they are posted on the Grants.gov website. We would not specify the website address in case the website changes again in the future. No other edits to the meaning of this paragraph would be intended by this change.

We propose to remove the definition of the term rehabilitation in the list of definitions in § 61.1. VA defines the term rehabilitation to mean the improvement or repair of an existing structure but excludes minor or routine repairs. This definition is no longer indicative of what rehabilitation means for GPD grants. The term rehabilitation can have a variety of meanings, which would depend on the scope of a particular funding opportunity. As such, we would omit the definition in the regulation and continue to define rehabilitation in the NOFO , as needed.

We propose to remove the definition of the term total project cost from the list of definitions in § 61.1. VA defines the term total project cost to mean the sum of all costs incurred by a recipient for the acquisition, rehabilitation, and new construction of a facility, or van(s), identified in a grant application. VA believes that this definition of the term is no longer broadly applicable to GPD projects because the types of projects have expanded beyond capital projects. Furthermore, Federal-wide cost principles for grants adequately define what constitutes total costs in 2 CFR 200.402. Therefore, additional clarification would not be provided by the current definition.

#### **Section 61.12 Capital grant application packages – threshold requirements.**

Section 61.12 establishes the threshold requirements that must be met for the capital grants program. Paragraph (e) states that the application must demonstrate compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655). However, because the timeline between application and award is usually several months, the actual property that will be acquired is typically not determined until after the capital grant has been awarded. As a result, compliance with the URA would occur after VA awards a capital grant at the time the grantee demonstrates site control before receiving capital grant payments. Therefore, VA believes that this compliance requirement would be best placed under site control in § 61.17. This proposed amendment would not change current practice. We, therefore, propose to remove paragraph (e) from § 61.12 and redesignate current paragraphs (f) through (i) as new paragraphs (e) through (h), respectively. We would also add a new paragraph (b) to § 61.17 to state the site must be in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655). No changes in the meaning of this paragraph would be made by this change. We would also redesignate current paragraphs § 61.17(b) and (c) as new paragraphs (c) and (d), respectively.

### **Section 61.13 Capital grant application packages – rating criteria.**

Section 61.13 establishes the rating criteria for the capital grant. Paragraph (g) contains the rating criterion addressing coordination with other programs. Paragraph (g) states that VA will award up to 200 points based on the extent to which applicants demonstrate that they have coordinated with Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project; it then lists examples of such entities. In addition, it states that applicants are required to demonstrate that they have coordinated with the VA medical care facility of jurisdiction and/or VA Regional Office of jurisdiction in their area. We propose to remove the reference to the VA Regional Office of jurisdiction in their area because the GPD program is coordinated by the Veterans Health Administration via the VA medical facilities and not VA Regional Offices. Therefore, we propose to state that applicants are required to demonstrate that they have coordinated with the VA medical facility of jurisdiction.

Paragraph (g) also specifies that VA will award up to 50 points of the 200 points based on the extent to which commitments to provide supportive services are documented at the time of application. Up to 150 points of the 200 points will be given to the extent applicants demonstrate that: (1) they are part of an ongoing community-wide planning process within the framework described above which is designed to share information on available resources and reduce duplication among programs that serve homeless veterans; (2) they have consulted directly with the closest VA Medical Center and other providers within the framework described above regarding coordination of services for project participants; and (3) they have coordinated with the closest VA Medical Center their plan to assure access to health care, case management, and other care services. We propose to remove these specific criteria because that information is not useful in reviewing, scoring, and selecting high-quality applications. We believe that

the portion of paragraph (g) we propose to remain in the rule would continue to hold applicants accountable for coordinating with other programs but would provide the necessary flexibility for VA reviewers to score those applications based on the type and quality of coordination that will result in the best services for veterans even as changes to how communities are organized may arise. We also would make a minor grammatical edit for clarity by adding a comma after “private” in the list of entities serving homeless persons.

**Section 61.15 Capital grants – obtaining additional information and awarding capital grants.**

Section 61.15 establishes the procedures for obtaining additional information for the capital grants, as necessary, and for awarding such grants. Paragraph (a)(4) requires that the applicant submit documentation establishing compliance with the National Historic Preservation Act (NHPA) (16 U.S.C. 470). However, this citation is no longer correct as the provisions of the NHPA were moved by Public Law 113-287 (December 19, 2014). The correct statutory citation is 54 U.S.C. 300101 et seq. Part 106 of the NHPA (54 U.S.C. 306108) requires Federal agencies to take into account the effects of an undertaking on historic properties. Regulations implementing part 106 (36 CFR part 800) provide how Federal agencies meet this statutory responsibility. We propose to amend paragraph (a)(4) with the current NHPA citation and to state that the applicant may be asked to submit documentation establishing compliance with 36 CFR part 800, the regulations implementing section 106 of the NHPA (54 U.S.C. 306108). No other change to the meaning of this paragraph would be intended by this change.

Paragraph (a)(5) requires the applicant to submit information necessary for VA to ensure compliance both with Uniform Federal Accessibility Standards (UFAS) and the Americans with Disabilities Act (ADA) Accessibility Guidelines. In 1968, VA was a major advocate for The Architectural Barriers Act, Public Law 90-480, which ensured that

buildings financed with Federal funds were so designed and constructed as to be accessible to everyone. This law required all construction, renovation, or leasing with Federal funds meet Uniform Federal Accessibility Standards (UFAS). These standards brought all Federal agencies under a common accessibility guideline for the first time. The Americans with Disabilities Act (ADA) of 1990 set accessibility requirements for State and local government, as well as private sector projects, similar to the requirements set for Federal projects through the Architectural Barriers Act. Today, VA follows U.S. General Services Administration and other standard-setting agencies in replacing UFAS with the Architectural Barriers Act Accessibility Standard (ABAAS) for Federal facilities. As such, we propose to amend paragraph (a)(5) to now state that the applicant must ensure compliance both with Architectural Barriers Act Accessibility Standards and the Americans with Disabilities Act Accessibility Guidelines. This is not a substantive change for applicants, and no other change to the meaning of this paragraph would be intended by this change.

Paragraph (a)(8) requires the applicant, as necessary, to ensure compliance with the provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) and its implementing regulations (40 CFR parts 1500-1508). As required by NEPA, VA established agency-specific procedures to implement the requirements of NEPA at 38 CFR part 26. We propose to amend paragraph (a)(8) to also reference VA's implementing regulations and to direct the reader to the NEPA requirements specific to VA. Therefore, we propose to amend paragraph (a)(8) to state that the applicant, as necessary, must submit information necessary for VA to ensure compliance with the NEPA, the generally applicable regulations implementing NEPA (40 CFR parts 1500-1508), and VA's agency-specific regulations implementing NEPA (38 CFR part 26). No other change to the meaning of this paragraph would be intended by this change.

## **Section 61.80 General operation requirements for supportive housing and service centers.**

We propose to revise paragraph (a) of § 61.80 to be consistent with 38 U.S.C. 2011(b)(5)(B). Paragraph (a) of § 61.80 does not contain the statutory phrase “or such other comparable fire and safety requirements as the Secretary may specify” and only references the Life Safety Code of the National Fire Protection Association. Including the statutory language in the regulation would more closely follow the language of the statute and would continue to ensure the safety of veterans who reside in supportive housing or who receive support from service centers. No other edits to the meaning of this paragraph would be intended by this change.

## **Section 61.92 Grant for case management services – application and rating criteria.**

Section 61.92 establishes the application and rating criteria for grants for case management services. We propose to make a technical edit to § 61.92(b) to correct a typographical error. Paragraph (b) states that to be eligible for a case management grant, an applicant must receive at least 750 points (out of a possible 1000) and must receive points under paragraphs (c) through (f) of this section. This paragraph should have referenced paragraphs (c) through (g) of this section, not paragraphs (c) through (f), and we propose to make this edit. As previously stated, we would also revise the term Notice of Fund Availability (NOFA) to now state Notice of Funding Opportunity, where it appears in this section. No other edits to the meaning of this section would be intended by this change.

As stated, paragraphs (c) through (g) list the rating criteria for applicants. Paragraph (g) provides the criteria addressing coordination with other programs and states VA will award up to 200 points based on the extent to which the applicant demonstrates that it has coordinated with Federal, State, local, private, and other

entities serving homeless persons or persons at risk for homelessness in the planning and operation of the case management services project; it then lists examples of such entities. In addition, it states that applicants are required to demonstrate that they have coordinated with the VA medical care facility of jurisdiction or VA Regional Office of jurisdiction in their area. We propose to remove the reference to the VA Regional Office of jurisdiction in their area because the GPD program is coordinated by the Veterans Health Administration via the VA medical facilities and not VA Regional Offices.

Therefore, we propose to state that applicants are required to demonstrate that they have coordinated with the VA medical facility of jurisdiction.

Paragraph (g) further specifies that VA will award up to 50 points of the 200 points based on the extent to which commitments to provide supportive services are documented at the time of application. Up to 150 points of the 200 points will be given to the extent applicants demonstrate that: (1) they are part of an ongoing community-wide planning process within the framework described in this section, which is designed to share information on available resources and reduce duplication among programs that serve homeless veterans (e.g. Continuum of Care); (2) they have consulted directly with the closest VA medical facility and other providers within the framework described in this section regarding coordination of services for project participants; and (3) they have coordinated with the closest VA medical facility their plan to assure access to health care, case management, and other care services. We propose to remove these specific criteria because, as previously stated in this rulemaking, this information is not useful in reviewing, scoring, and selecting high-quality applications. We believe that the portion of paragraph (g) we propose to retain in the rule would continue to hold applicants accountable for coordinating with other programs but would provide the necessary flexibility for VA reviewers to score those applications based on the type and quality of

coordination that will result in the best services for veterans even as changes to how communities are organized may arise.

We also make other minor grammatical edits for clarity, such as in section 61.32, removing a comma and adding the word “the”.

In addition, § 61.92 currently contains an incomplete Office of Management and Budget (OMB) information collection control number. The information collection in this regulation has been approved by OMB and has been assigned OMB control number 2900-0554. We propose to update § 61.92 to correctly reflect OMB’s control number.

### **Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this proposed rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at [www.regulations.gov](http://www.regulations.gov).

### **Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). The provisions associated with this rulemaking do not involve costs to small entities because the GPD Program provides Federal awards (e.g., grant money) to small entities. Although the small entities must apply for Federal awards, there are no out-of-pocket expenses (e.g., no



filing fees) created by this rulemaking. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

### **Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

### **Paperwork Reduction Act**

This proposed rule would amend 38 CFR 61.11, 61.12, 61.15, 61.31, 61.41, 61.51, 61.80, and 61.92, which contain provisions constituting collections of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). However, no new or proposed revised collections of information are associated with this proposed rule. The information collection requirements for §§ 61.11, 61.12, 61.15, 61.31, 61.41, 61.51, 61.80, and 61.92 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900-0554. However, in earlier rulemakings, VA did not update § 61.92 to correctly reflect OMB control number 2900-0554. As noted above, we propose to correct this omission through this rulemaking by updating the reference in § 61.92 to OMB control number 2900-0554.

### **Assistance Listing**

The Assistance Listing number and title for the program affected by this document is 64.024, VA Homeless Providers Grant and Per Diem Program.

### **List of Subjects in 38 CFR Part 61**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on July 13, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

***Consuela Benjamin,***

*Regulations Development Coordinator,*

*Office of Regulation Policy & Management,*

*Office of General Counsel,*

*Department of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 61 as set forth below:

## **PART 61 – VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM**

1. The authority citation for part 61 is revised to read as follows:

Authority: 38 U.S.C. 501, 2001, 2002, 2011, 2012, 2013, 2061, and 2064.

2. Amend § 61.1 by:

- a. Removing the definitions of *Area or community* and *Fixed site*.
- b. Revising the definition of *Homeless*.
- c. Adding a definition for *Minor dependent* in alphabetical order.
- d. Removing the definition of *Notice of Fund Availability (NOFA)* and adding a definition for *Notice of Funding Opportunity* in alphabetical order.
- e. In paragraph (1) of the definition of *Public entity*, removing the term “state law” and adding in its place “State law”.
- f. Removing the definition of *Rehabilitation*.
- g. In the definition of *State*, removing the terms “state” and “states” and adding in their place the terms “State” and “States” wherever they appear.
- h. Removing the definition of *Total project cost*.

The revisions and additions read as follow:

### **§ 61.1 Definitions.**

\* \* \* \* \*

*Homeless* has the meaning given that term in section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a), (b), and (d)).

*Minor dependent* means someone who is unmarried, is not an emancipated minor, is identified by the veteran as a family member when presenting for GPD services, and:

- (1) Is under age 23; or

(2) Is age 23 or over and became permanently incapable of self-support before the age of 23.

\* \* \* \* \*

*Notice of Funding Opportunity* means a notice published on the Office of Management and Budget-designated government-wide website announcing the availability of Federal funding in accordance with § 61.3.

\* \* \* \* \*

3. Amend § 61.3 by revising the section heading and introductory text to read as follows:

**§ 61.3 Notice of Funding Opportunity.**

When funds are made available for a grant or per diem award under this part, VA will publish a Notice of Funding Opportunity in the Office of Management and Budget-designated government-wide website and the program's website. The notice will:

\* \* \* \* \*

**§ 61.11 [Amended]**

4. Amend § 61.11 by:

a. In paragraph (a), removing the term "Notice of Fund Availability" and adding in its place the term "Notice of Funding Opportunity".

b. In paragraph (b)(6), removing the term "state" and adding in its place the term "State" wherever it appears.

**§ 61.12 [Amended]**

5. Amend § 61.12 by:

a. In paragraphs (a)(2) and (4), removing the term "Notice of Fund Availability" and adding in its place the term "Notice of Funding Opportunity".

b. Removing paragraph (e) and redesignating paragraphs (f) through (i) as paragraphs (e) through (h), respectively.

6. Amend § 61.13 by:

a. In paragraphs (d)(10) and (f), removing the term “state” and adding in its place the term “State”.

b. Revising paragraph (g).

The revision reads as follows.

**§ 61.13 Capital grant application packages - rating criteria.**

\* \* \* \* \*

(g) *Coordination with other programs.* VA will award up to 200 points based on the extent to which applicants demonstrate that they have coordinated with Federal, State, local, private, and other entities serving homeless persons in the planning and operation of the project. Such entities may include shelter transitional housing, health care, or social service providers; providers funded through Federal initiatives; local planning coalitions or provider associations; or other program providers relevant to the needs of homeless veterans in the local community. Applicants are required to demonstrate that they have coordinated with the VA medical facility of jurisdiction.

\* \* \* \* \*

**§ 61.14 [Amended]**

7. Amend § 61.14 by, in paragraph (a), removing the term “NOFA” and adding in its place the term “Notice of Funding Opportunity”.

**§ 61.15 [Amended]**

8. Amend § 61.15 by:

a. In paragraph (a)(4), removing “the National Historic Preservation Act (16 U.S.C. 470)” and adding in its place “36 CFR part 800, the regulations implementing section 106 of the National Historic Preservation Act (54 U.S.C. 306108)”.

b. In paragraph (a)(5), removing “Uniform Federal Accessibility Standards (UFAS)” and adding in its place “Architectural Barriers Act Accessibility Standards (ABAAS)”.

c. In paragraphs (a)(6) and (7), removing the term “state” and adding in its place the term “State”.

d. In paragraph (a)(8), removing “provisions of the National Environmental Policy Act (42 U.S.C. 4321 et seq.)” and adding in its place “the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.), the generally applicable regulations implementing the NEPA (40 CFR parts 1500 through 1508), and VA’s regulations implementing the NEPA (38 CFR part 26)”.

e. In paragraph (b), removing the term “Notice of Fund Availability” and adding in its place the term “Notice of Funding Opportunity”.

9. Amend § 61.17 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and adding a new paragraph (b) to read as follows.

**§ 61.17 Site control for capital grants.**

\* \* \* \* \*

(b) The site must be in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655).

\* \* \* \* \*

**§ 61.18 [Amended]**

10. Amend § 61.18, in paragraph (a), by removing the term “NOFA” and adding in its place the term “Notice of Funding Opportunity”.

**§ 61.31 [Amended]**

11. Amend § 61.31 by:

a. In paragraph (b), removing the term “Notice of Fund Availability” and adding in its place the term “Notice of Funding Opportunity”.

b. In paragraph (b)(4), removing the term “state” and add in its place the term “State” wherever it appears.

12. Amend § 61.32 by revising paragraph (a) to read as follows.

**§ 61.32 Per diem application packages—rating criteria.**

(a) *Conditional selection.* Application packages for per diem only (i.e., from non-capital grant applicants) in response to a Notice of Funding Opportunity will be reviewed and grouped in categories according to the funding priorities set forth in the Notice of Funding Opportunity, if any. Such applications will then be ranked within their respective funding category according to scores achieved only if the applicant scores at least 750 cumulative points out of a possible 1000 from each of the following paragraphs: (b), (c), (d), (e), (f), and (g) of § 61.13. The highest-ranked applications for which funding is available, within the highest funding priority category if applicable, will be conditionally selected for eligibility to receive per diem payments or special need payment in accordance with their ranked order. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group, VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding. Conditional selectees will be subsequently awarded per diem if they otherwise meet the requirements of this part, including passing the inspection required by § 61.80.

\* \* \* \* \*

13. Amend § 61.33 by:

- a. Revising paragraphs (c) introductory text and (c)(2).
- b. Adding paragraph (c)(3).
- c. Redesignating paragraphs (d) through (h) as paragraphs (e) through (i) and adding a new paragraph (d).

The revisions and additions read as follows:

### **§ 61.33 Payment of per diem.**

\* \* \* \* \*

(c) *Rate of payments for individual veterans.* Except as provided in paragraph (c)(3) of this section, the rate of per diem for each veteran in supportive housing shall be the lesser of:

\* \* \* \* \*

(2) The maximum allowable rate as adjusted by the Secretary under 38 U.S.C. 2012(a)(2)(B)(i)(II)(aa) and made available on the program's website.

(3) For a veteran who is placed in housing that will become permanent housing for that veteran upon termination of supportive housing services, the rate of payment shall be the lesser of 150 percent of the current VA state home program per diem rate for domiciliary care, as set by the Secretary under 38 U.S.C. 1741(a)(1), or the daily cost of care estimated pursuant to paragraph (c)(1) of this section.

(d) *Rate of payment for a veteran who has care of a minor dependent.* The per diem rate for a veteran who has care of a minor dependent while such veteran is receiving services from a grant recipient or eligible entity will be the sum of the rate in paragraph (c) of this section and an additional amount for each minor dependent as determined pursuant to 38 U.S.C. 2012(a)(2)(A)(iii) and made available on the program's website. Such additional amount will only be added when the minor dependent is occupying a bed on the same day that a veteran-care rate is charged to the grant.

\* \* \* \* \*

### **§ 61.41 [Amended]**

14. Amend § 61.41, in paragraph (a), by removing the term "Notice of Fund Availability" and adding in its place the term "Notice of Funding Opportunity".

### **§ 61.51 [Amended]**



15. Amend § 61.51 by:

a. In paragraph (a), removing the term “Notice of Fund Availability” and adding in its place the term “Notice of Funding Opportunity”.

b. In paragraph (b)(6), removing the term “state” and adding in its place the term “State” wherever it appears.

**§ 61.52 [Amended]**

16. Amend § 61.52, in paragraph (a), by removing the term “Notice of Fund Availability” and adding in its place the term “Notice of Funding Opportunity”.

**§ 61.53 [Amended]**

17. Amend § 61.53 by, in paragraph (c)(6), removing the term “state” and adding in its place the term “State”.

**§ 61.54 [Amended]**

18. Amend § 61.54 by:

a. In paragraph (a), removing the term “NOFA” and adding in its place the term “Notice of Funding Opportunity”.

b. In paragraph (d), removing the term “Notice of Fund Availability” and adding in its place the term “Notice of Funding Opportunity”.

**§ 61.61 [Amended]**

19. Amend § 61.61, in paragraph (e), by removing the term “state” and adding in its place the term “State”.

**§ 61.62 [Amended]**

20. Amend § 61.62 by, in paragraph (c), removing the term “state” and adding in its place the term “State”.

21. Amend § 61.80 by:

a. Revising paragraph (a).

b. In paragraph (b)(4), removing the term “state” and adding in its place the term “State”.

The revision reads as follows.

**§ 61.80 General operation requirements for supportive housing and service centers.**

(a) Supportive housing and service centers for which assistance is provided under this part must comply with the requirements of the current edition of the Life Safety Code of the National Fire Protection Association or such other comparable fire and safety requirements as the Secretary may specify and all applicable State and local housing codes, licensing requirements, fire and safety requirements, and any other requirements in the jurisdiction in which the project is located regarding the condition of the structure and the operation of the supportive housing or service centers. Note: All facilities are to be protected throughout by an approved automatic sprinkler system unless a facility is specifically exempted under the Life Safety Code or under other comparable fire and safety requirements as the Secretary may specify.

\* \* \* \* \*

22. Amend § 61.92 by:

a. In paragraph (a) introductory text, removing the phrase “Notice of Fund Availability (NOFA) in the Federal Register” and adding in its place “Notice of Funding Opportunity on the Office of Management and Budget-designated government-wide website”.

b. In paragraphs (a)(1) and (3), removing the term “NOFA” wherever it appears and adding in its place “Notice of Funding Opportunity”.

c. In paragraph (b), removing the phrase “paragraphs (c) through (f)” and adding in its place “paragraphs (c) through (g)”.

d. In paragraphs (d)(7) and (f), removing the term “state” and adding in its place the term “State” wherever it appears.

e. Revising paragraph (g).

f. Revising the parenthetical at the end of the section.

The revisions read as follows:

**§ 61.92 Grant for case management services - application and rating criteria.**

\* \* \* \* \*

(g) *Coordination with other programs.* VA will award up to 200 points based on the extent to which the applicant demonstrates that it has coordinated with Federal, State, local, private, and other entities serving homeless persons or persons at risk for homelessness in the planning and operation of the case management services project. Such entities include, but are not limited to, shelters, transitional housing, Public Housing Authorities, health care or social service providers, providers funded through Federal initiatives, local planning coalitions or provider associations, or other program providers relevant to the needs of formerly homeless veterans in the local community. Applicants are required to demonstrate that they have coordinated with the VA medical facility of jurisdiction.

(Approved by the Office of Management and Budget under control number 2900-0554.)

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